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ADR

ORIGINAL FILED
 SEP 11 2007
 RICHARD V. WHEAT
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

Attorney for Plaintiff
 Qin Chen

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 COMPLAINT**

Qin Chen,

Plaintiff,

v.

Alberto Gonzales, United States Attorney
 General, U.S. Department of Justice;
Michael Chertoff, Secretary of the
 Department of Homeland Security;
Emilio T. Gonzalez, Director of United States
 Citizenship and Immigration Services;
Robert S. Mueller III, Director of the Federal
 Bureau of Investigation,

Defendants.

Case No. **C07 04688**

HRL

**PLAINTIFF'S ORIGINAL COMPLAINT
 FOR WRIT IN THE NATURE OF
 MANDAMUS & DECLARATORY
 JUDGMENT UNDER 28 U.S.C. § 1361**

Immigration Case

Plaintiff, Qin Chen, by and through his attorney of record, opens this lawsuit against the Defendants and will show this Court the following:

1. Plaintiff, Qin Chen, brings this case to compel action on the delayed processing of his I-485, *Application to Register Permanent Residence or Adjust Status*. This application remains within the jurisdiction of the Defendants who have improperly delayed and withheld action on

1 this application to Plaintiff's detriment.

2 PARTIES

3 2. Plaintiff, Qin Chen, a resident of Sunnyvale, CA, is the primary applicant of an I-485,
4 *Application to Register Permanent Residence or Adjust Status* ("I-485"), filed with the United
5 States Citizenship and Immigration Services ("USCIS").

6 3. Defendant, Alberto Gonzales, is the Attorney General of the United States, and this
7 action is brought against him in his official capacity. He is authorized to adjust to permanent
8 resident status certain aliens who have been admitted to the United States, and is further
9 authorized to delegate such powers to other government officials. Defendant Gonzales is also the
10 head of the Department of Justice, which is the department responsible for the FBI and the
11 National Name Check Program.

12 4. Defendant, Michael Chertoff, is the Secretary of the Department of Homeland Security
13 ("DHS"), and this action is brought against him in his official capacity. Defendant Chertoff is
14 generally charged with enforcement of the Immigration and Nationality Act and its related
15 regulations, which provide for the processing of adjustment of status applications.

16 5. Defendant, Emilio T. Gonzalez, is the Director of USCIS, and this action is brought
17 against him in his official capacity. USCIS is an agency within the DHS to which DHS'
18 authority has, in part, been delegated. Defendant Gonzalez is generally charged with the overall
19 administration of immigration benefits and services, including adjustment of status.

20 6. Defendant, Robert S. Mueller, III, is Director of the Federal Bureau of Investigation
21 ("FBI"), and this action is brought against him in his official capacity. Defendant Mueller has
22 yet to complete the security clearance ("Name Check") on Plaintiff's I-485 case.

23 JURISDICTION

24 7. Jurisdiction in this case is proper under 28 U.S.C. §§ 1331 and 1361, 5 U.S.C. §§ 551, *et*
25 *seq.* and 701, *et seq.*, and 28 U.S.C. § 2201 *et seq.* Relief is requested pursuant to said statutes.
26 Additionally, attorney fees and costs will be sought pursuant to the Equal Access to Justice Act,
27 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.*

1 **VENUE**

2 8. Venue is proper in this honorable Court, pursuant to 28 U.S.C. §1391(e), in that Plaintiff
3 may request a hearing on the matter in the district where Plaintiff resides.

4 **INTRADISTRICT ASSIGNMENT**

5 9. This lawsuit should be assigned to the San Jose Division of this court because a
6 substantial part of the event or omission which give rise to this lawsuit occurred in Santa Clara
7 County.

8 **EXHAUSTION OF REMEDIES**

9 10. Plaintiff has exhausted his administrative remedies. Plaintiff has supplied the USCIS and
10 the FBI with documents that clearly establish his eligibility to register as a permanent resident,
11 and as will be demonstrated by the evidence, has followed up with numerous inquiries and
12 requests to the pertinent administrative agencies attempting to expedite his delayed application.

13 **CAUSE OF ACTION**

14 11. Plaintiff (Mr. Chen) properly filed an I-485, *Application to Register Permanent*
15 *Residence or Adjust Status* with the USCIS on March 31, 2004. The I-485 receipt notice lists
16 Plaintiff's Alien Registration Number ("A#") as "135 026 682" (**EXHIBIT 1**)

17 12. On May 13, 2004, Mr. Chen's first FBI Name Check was initiated under the above A#
18 135 026 682. (**EXHIBIT 17**)

19 13. On July 7, 2005, Mr. Chen submitted his fingerprints to the USCIS. (**EXHIBIT 2**)

20 14. On May 25, 2005, Mr. Chen was assigned an interview date of August 02, 2005 in
21 Philadelphia. This notice however, contained a different Alien Registration Number than the one
22 previously assigned to Mr. Chen. This interview notice lists Mr. Chen's A# as "098 329 125" as
23 opposed to "135 026 682" (**EXHIBIT 3**)

24 15. In June of 2005, Mr. Chen moved to California and timely filed Form AR-11, *Alien's*
25 *Change of Address Card*. On July 8, 2005, Mr. Chen's attorney, Clark Trevor informed the
26 USCIS Philadelphia District Office that Mr. Chen had moved and requested his file to be
27 transferred to the San Francisco District, and requested an interview with the Sub-Office located
28 in San Jose. (**EXHIBIT 4**)

16. On October 7, 2005, despite the timely filing of Plaintiff's Form AR-11 and Attorney Trevor's notification of the change of address, the USCIS in Philadelphia issued a Denial of Form I-485 for failure to appear at the scheduled interview and mailed the decision to Attorney Trevor and Plaintiff's previous residence. **(EXHIBIT 5 & 17)**

17. After an explanation of the errors made by the Philadelphia District Office, the USCIS reopened the denied I-485 and forwarded the file to the San Francisco Office on October 24, 2005. **(EXHIBIT 6 & 17)**

18. On February 14, 2006, Mr. Chen appeared before the USCIS San Jose Sub-Office for his I-485 initial interview. **(EXHIBIT 7)**

19. On February 14, 2006, Mr. Chen received an Adjustment of Status Notice indicating that a required background check had been initiated, but that a response was still pending. **(EXHIBIT 8)**

20. On May 2, 2006, the USCIS initiated another FBI Name Check for Plaintiff under the A# 098 329 125. **(EXHIBIT 17)**

21. On May 23, 2006, Mr. Chen submitted his fingerprints for a second time at the USCIS San Jose Sub-Office. **(EXHIBIT 9)**

22. On January 29, 2007, Mr. Chen contacted USCIS regarding his stalled I-485 application and made an Infopass appointment with the USCIS San Jose Sub-Office. In a response letter dated January 30, 2007, Mr. Chen was informed that his I-485 application was delayed because the background investigation (FBI Name Check) remains open. **(EXHIBIT 10)**

23. On February 1, 2007, Plaintiff wrote a letter to the USCIS San Jose Sub-office, requesting assistance with his stalled I-485 application. In a response letter dated February 12, 2007, Mr. Chen was told once again that his I-485 application was delayed because the background investigation (FBI Name Check) remains open. **(EXHIBIT 11)**

24. On February 1, 2007, Plaintiff wrote a letter to Senator Dianne Feinstein, requesting assistance with his stalled I-485 application. In a response letter dated May 25, 2007, Morgan Galli, Constituent Services Representative from Senator Feinstein's San Francisco office, responded and informed Mr. Chen that his case was still pending due to the FBI Name Check.

1 **(EXHIBIT 12)**

2 25. On February 1, 2007, Mr. Chen wrote a letter to First Lady Laura Bush, requesting
3 assistance with his stalled I-485 application. In the response letter dated March 28, 2007, the FBI
4 responded and told Mr. Chen that his FBI Name Check was still pending. **(EXHIBIT 13)**

5 26. Mr. Chen contacted Senator Barbara Boxer, requesting assistance with his stalled I-485
6 application. In a response letter dated February 23, 2007, Constituent Representative Lucia C.
7 Macias informed Mr. Chen that his case is pending security clearances (FBI Name Check).

8 **(EXHIBIT 14)**

9 27. Mr. Chen contacted Congresswoman Anna G. Eshoo, requesting assistance with his
10 stalled I-485 application. On April 16, 2007, Congresswoman Eshoo informed Mr. Chen that his
11 I-485 application was still pending due to an FBI Name Check. **(EXHIBIT 15)**

12 28. Mr. Chen appeared at the USCIS San Jose sub-office for an Infopass appointment on
13 May 17, 2007 to inquire about the status of his case. Mr. Chen was informed that his case was
14 still pending due to the FBI Name Check. **(EXHIBIT 16)**

15 29. On May 24, 2007, Attorney Trevor wrote a letter to the USCIS San Jose sub-office
16 requesting Plaintiff's I-485 application be expedited due to the numerous errors USCIS had made
17 during the processing of his case. In a response letter dated August 23, 2007, Rosemary Langley
18 Melville, USCIS District Director, informed Attorney Trevor that there were two Name Checks
19 pending on Mr. Chen's case due to USCIS issuing two A numbers for the him, and that both
20 Name Checks still remain pending. **(EXHIBIT 17)**

21 30. Mr. Chen contacted the USCIS to inquire about the status of his I-485 application and in
22 a response letter dated August 22, 2007, Mr. Chen was informed once again that his I-485
23 application was still pending the FBI Name Check. **(EXHIBIT 18)**

24 31. Mr. Chen contacted USCIS AOS Unit regarding his stalled I-485 application and in a
25 response letter dated August 23, 2007, Mr. Chen was told that required background checks were
26 not yet completed. **(EXHIBIT 19)**

27 32. During the processing of Plaintiff's I-485 application, the USCIS has:

28 a. Erroneously issued Plaintiff two different Alien Registration Numbers

1 b. Erroneously issued a denial of the I-485 application and have had to re-open
2 Plaintiff's case.

3 c. Erroneously requested two separate Name Checks for Plaintiff under his two
4 different Alien Registration Numbers. The first Name Check was initiated on
5 March 31, 2004, with a second Name Check initiated on May 2, 2006.

6 These errors have contributed to the three and a half year processing time for Plaintiff's I-485
7 application.

8 33. Although the role of Defendants is pivotal to the security of the United States of America,
9 the Defendants' actions have gone well beyond the expected 8 months processing time for the
10 adjudication of an I-485 Application (See California Service Center processing dates for I-485
11 cases posted August 15, 2007. **(EXHIBIT 20)**)

12 34. Defendants have failed to adhere to their own processing times and procedures and, due
13 to these errors, have delayed the processing of Plaintiff's I-485 case.

14 35. Defendants have sufficient information to complete adjudication of Plaintiff's I-485
15 application.

16 36. Plaintiff has been greatly damaged by the failure of Defendants to act in accordance with
17 their duties under the law. Specifically:

18 (a) Plaintiff has been unable to obtain legal permanent residence and thus cannot
19 travel or work without restriction. He must spend additional time and pay
20 additional filing fees each year in order to work and travel legally.

21 (b) Plaintiff is unable to accrue time to be eligible for naturalization as a citizen of
22 the United States, thus delaying his obtainment of the rights and privileges
23 enjoyed by citizens of the United States.

24 37. Defendants, in violation of the Administrative Procedures Act at 5 U.S.C. § 706(1), are
25 unlawfully withholding action on Plaintiff's application, and have unreasonably delayed action
26 on Plaintiff's case.

27 38. Defendants, in violation of the Administrative Procedures Act at 5 U.S.C. § 555(b), are
28 unlawfully delaying action on Plaintiff's application and have failed to complete the adjudicative

1 functions delegated to them by law within a reasonable time.

2 **PRAYER**

3 39. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff
4 respectfully prays that the Defendants be cited to appear herein and that, upon due consideration,
5 the Court enter an order:

6 (a) requiring the USCIS to immediately submit an Expedite Request to the FBI for
7 expedited processing of Plaintiff's FBI Name Check;

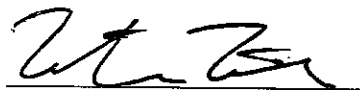
8 (b) requiring the USCIS to complete adjudication of Plaintiff's I-485 Application within
9 60 days of receiving the Court's Order;

10 (c) awarding reasonable attorney's fees pursuant to the Equal Access to Justice Act; and

11 (d) granting such other relief at law and in equity as justice may require.
12
13
14

15 Dated: September 11, 2007

Respectfully Submitted,

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18 Justin Fok, CSBN: 242272
19 Attorney for Plaintiff
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EXHIBIT LIST

- Exhibit 1: Plaintiff's receipt notice for I-485 dated March 31, 2004
- Exhibit 2: Biometrics processing done on July 07, 2004.
- Exhibit 3: Plaintiff's first interview notice, dated May 05, 2005 for August 02, 2005.
- Exhibit 4: Letter to Philadelphia District Office from Attorney Clark Trevor for Request to Transfer File and to Reschedule Interview.
- Exhibit 5: Plaintiff's Notice of Decision from USCIS on October 7, 2005 denying his application for lawful permanent residence due to failing to appear at interview.
- Exhibit 6: E-mail correspondence between Attorney Trevor and Evangelia Klapakis of the USCIS regarding Plaintiff's motion to reopen due to the Philadelphia offices error and the transfer of the file to the Sub-Office in San Jose, CA.
- Exhibit 7: Plaintiff's second interview notice, dated December 01, 2005 for February 14, 2006.
- Exhibit 8: Adjustment of Status Notice dated February 14, 2006.
- Exhibit 9: Fingerprints referral notice, biometrics processing done on May 23, 2006
- Exhibit 10: Plaintiff's Infopass notice and letter from USCIS dated January 30, 2007.
- Exhibit 11: Plaintiff's letter to the USCIS San Jose Field office, dated February 1, 2007 and response from the USCIS San Jose Field Office dated February 12, 2007.

1 Exhibit 12: Plaintiff's letter to Senator Dianne Feinstein dated February 1, 2007 and response
2 from Dianne Feinstein dated March 9, 2007, and response from Constituent
3 Services Representative dated May 25, 2007.
4

5 Exhibit 13: Plaintiff's letter to First Lady Laura Bush dated February 1, 2007 and response
6 from Michael A. Cannon of the Federal Bureau of Investigation dated March 28,
7 2007.
8

9 Exhibit 14: Response from Lucia C. Macias, Constituent Representative for Senator Barbara
10 Boxer dated February 23, 2007
11

12 Exhibit 15: Response from Congresswomen Anna G. Eshoo dated April 16, 2007
13

14 Exhibit 16: Plaintiff's Infopass appointment dated May 17, 2007
15

16 Exhibit 17: Correspondence between Plaintiff's attorney, Clark M. Trevor, and Rosemary
17 Langley Melville, District Director from CIS San Jose Sub-office dated May 24,
18 2007
19

20 Exhibit 18: Plaintiff's inquiry with the USCIS San Jose Sub-Office dated August 22, 2007
21

22 Exhibit 19: Plaintiff's inquiry with the USCIS AOS Unit dated August 23, 2007
23

24 Exhibit 20: USCIS California Service Center Service Center Processing Date Posted August
25 15, 2007
26
27
28

Exhibit 1



Receipt Number: MSC-04-189-21665		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status
Received Date: March 31, 2004	Priority Date:	Applicant: A135026682 CHEN, QIN
Notice Date: May 04, 2004	Page 1 OF 1	ASC Code: 3

THOMAS FAN
230 N WASHINGTON STREET SUITE 400
ROCKVILLE MD 20850

Notice Type: Receipt Notice
Amount Received: \$305.00

The above application has been received. **Please notify us immediately if any of the above information is incorrect.** If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

FINGERPRINTING AND BIOMETRICS-

The next step is to have your fingerprints and biometrics taken at a BCIS Application Support Center (ASC).

Call our National Customer Service Center (NCSC) at **1-800-375-5283** to schedule your appointment. For TDD hearing impaired assistance, please call **1-800-767-1833**.

It is important that you schedule your appointment. If you do not schedule or appear for your appointment, it could cause your application to be denied. If you need to reschedule your appointment, please call the NCSC at **1-800-375-5283**.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from BCIS in relation to your current application for benefits.

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U S BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. BOX 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283



Exhibit 2

Department of Justice
Immigration and Naturalization Service

Notice of Action

THE UNITED STATES OF AMERICA

Receipt Number: MSC-04-189-21665		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status
Received Date: March 31, 2004	Priority Date:	Applicant: A135026682 CHEN, QIN
Notice Date: May 04, 2004	Page 1 OF 1	ASC Code: 3

THOMAS FAN 230 N WASHINGTON STREET SUITE 400 ROCKVILLE MD 20850	Notice Type: Receipt Notice Amount Received: \$305.00
---	--

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

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Call our National Customer Service Center (NCSC) at 1-800-375-5283 to schedule your appointment. For TDD hearing impaired assistance, please call 1-800-767-1833.

It is important that you schedule your appointment. If you do not schedule or appear for your appointment, it could cause your application to be denied. If you need to reschedule your appointment, please call the NCSC at 1-800-375-5283.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

BIOMETRICS PROCESSING STAMP

ASC SITE CODE: 1002

If you do not bring this letter and photo identification, we cannot process you. Please bring a copy of all receipt notices received from BCIS in relation to your current application for benefits.

FINGERPRINTS QA REVIEW BY: 80283ON 07-07-07FINGERPRINTS QA REVIEW BY: 80283ON 07-07-07**CASE STATUS -**

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. BOX 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283



Exhibit 3



REQUEST FOR APPLICANT TO APPEAR FOR INITIAL INTERVIEW			NOTICE DATE May 25, 2005
CASE TYPE FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS			A# A 098 329 125
APPLICATION NUMBER MSC0418921665	RECEIVED DATE March 31, 2004	PRIORITY DATE March 31, 2004	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS QIN CHEN 1307 EAST MARKS STREET APT 203 ALLENTOWN PA 18109			
PLEASE COME TO: U.S. Citizenship and Immigration Services 1600 CALLOWHILL STREET 3RD FLOOR PHILADELPHIA PA 19130			
3			
ON: Tuesday, August 02, 2005 AT: 02:00 PM			
You are hereby notified to appear for the interview appointment, as scheduled above, for the completion of your Application to Register Permanent Residence or Adjust Status (Form I-485). Failure to appear may result in the denial of your application.			
Who should come with you? <ul style="list-style-type: none">■ If your eligibility is based on your marriage, your husband or wife <u>must</u> come with you to the interview.■ If you do not speak English fluently, you should bring an interpreter who is neither a relative nor an interested party in your application.■ Your attorney or authorized representative may come with you to the interview.			
NOTE: <u>Every</u> adult who comes to the interview <u>must</u> bring Government-issued photo identification, such as a driver's license or ID card, in order to enter the building and to verify his/her identity at the time of the interview. You do not need to bring your children unless otherwise instructed. Please be on time, but do not arrive more than 45 minutes early. We may record or videotape your interview.			
What <u>MUST</u> you bring? <ul style="list-style-type: none">■ Bring this Interview Notice.■ Bring your Government-issued photo identification.■ Bring <u>all</u> your Passports and <u>any other</u> documents, including your Arrival/Departure Document (Form I-94), used to enter the United States.■ Bring your Birth Certificate.■ Bring <u>all</u> documentation establishing your eligibility for Lawful Permanent Resident status (<i>see below: "What else should you bring?"</i>).■ Bring <u>all</u> immigration-related documentation ever issued to you.■ Bring both <u>originals and photocopies</u> of all supporting documents. Otherwise, we may keep your originals for our records.■ Bring a certified English translation for <u>each</u> document not in English. The translator must certify that s/he is fluent in both languages, and that the translation in its entirety is complete and accurate.			
What else should you bring? <ul style="list-style-type: none">■ Bring any Employment Authorization card or paper, and any Authorization for Advance Parole (Form I-512) ever issued to you.■ Bring your petitioner's Birth Certificate <i>and</i> your petitioner's evidence of United States Citizenship or Lawful Permanent Resident status.■ If you have children, bring a Birth Certificate for <u>each</u> of your children.■ If you are married, bring your Marriage Certificate.■ If your eligibility is based on your marriage, in addition to your spouse coming to the interview with you, bring:<ul style="list-style-type: none">■ Your spouse's Birth Certificate <i>and</i> your spouse's evidence of United States Citizenship or Lawful Permanent Resident status;■ If either you or your spouse were ever married before, <u>all</u> divorce decrees/death certificates for <u>each</u> prior marriage/former spouse;■ Birth Certificates for <u>all</u> children of this marriage, and custody papers for your children and for your spouse's children not living with you;■ Supporting evidence of your relationship, such as joint financial statements, joint legal documents, joint insurance policies, and photos.■ If you have not already submitted it, bring a completed medical examination (Form I-693) <i>and</i> vaccination supplement in a sealed envelope.■ Bring your Federal Income Tax returns <i>and</i> W-2's, or certified IRS printouts, for the past 3 years.■ If you are employed, bring letters from each of your current employers on company stationery, verifying your current rate of pay <i>and</i> average weekly hours, <i>and</i> bring your pay stubs for the past 2 months.■ Bring completed Affidavit(s) of Support (Form I-864), with <u>all</u> required evidence, including the following for <u>each</u> of your sponsors:<ul style="list-style-type: none">■ Federal Income Tax returns <i>and</i> W-2's, or certified IRS printouts, for the past 3 years;■ Letters from each current employer on company stationery, verifying current rate of pay <i>and</i> average weekly hours, <i>and</i> pay stubs for the past 2 months;■ Evidence of United States Citizenship or Lawful Permanent Resident status.■ If you have ever been arrested, for <u>each</u> arrest, bring the related Police Report and the original or certified Final Court Disposition, even if the charges have been dismissed or expunged. If no court record is available, furnish a letter from the court with jurisdiction indicating this.			
PLEASE MAKE EVERY EFFORT TO KEEP YOUR APPOINTMENT, even if you do not have all the listed items. If an <u>emergency</u> , such as the hospitalization of a close relative, prevents you from appearing, call the Citizenship and Immigration Services (CIS) customer service as soon as possible. Please be advised that rescheduling will delay processing, may require some steps to be repeated, and will affect your eligibility for other immigration benefits while this application is pending.			
If you have questions, please call CIS customer service at 1-800-375-5283 (hearing impaired TDD service is 1-800-767-1833).			
APPLICANT COPY			



Exhibit 4

Duane Morris

Mr. Qin CHEN
July 8, 2005
Page 2 of 2

6. Copies of Mr. Chen's latest pay slip from Finisar; and,
7. Copy of U.S. Postal Service confirmation of delivery of Mr. Chen's AR-11 to your Service in London, Kentucky.

Mr. Chen has permanently relocated to California and is requesting that his I-485 be approved pursuant to AC-21 §106(c) ["portability"].

We respectfully request that your office transfer the A file to the San Francisco District office to schedule an interview with the District's sub-office located in San Jose.

Sincerely yours,
Duane Morris LLP

Clark M. Trevor
Partner

CMT/kak
Enclosures
cc: Dee Miller, Finisar Corp.
cc: Qin Chen
SF77267.1

Exhibit 5

Philadelphia District Office

U.S. Department of Homeland Security
1600 Callowhill Street
Philadelphia, PA 19130



U.S. Citizenship
and Immigration
Services

Qin CHEN
1307 East Marks Street
Allentown, PA 18109

October 7, 2005
A 98 329 125

NOTICE OF DECISION

On March 31, 2004, you filed an *Application to Register Permanent Resident or Adjust Status, (form I-485)*. Through this application you requested that your immigrant status be adjusted to that of lawful permanent resident. The basis of your request was Section 245 of the *Immigration and Nationality Act*, as amended.

On August 2, 2005, you were scheduled for an interview before an Officer of the Service to determine through sworn testimony whether you are eligible for permanent residency. You failed to appear for that interview.

Title 8, Code of Federal Regulations, Part 103.2(b)(13) states:

Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. Except as provided in § 335.6 of this chapter, if an individual requested to appear for fingerprinting or for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied.

There is no evidence in the record that you offered an explanation for your failure to appear nor that you ever requested to be rescheduled. Therefore, your application is considered abandoned and is hereby denied per 8 CFR 103.2(b)(13).

A denial due to abandonment may not be appealed. However, there are limited motion rights. An application denied due to abandonment may be reopened with evidence that the decision was in error because:

- The requested evidence was not material to the issue of eligibility; or
- The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- The requested for appearance or additional information was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not get to the new address.

A motion to reopen under part 103.5, 8CFR, must be filed with a fee of \$110.00 within 33 days from the date of this decision.

Sincerely,

Donald J. Monica
District Director

DJM; rob

Cc: Fan & Fitzpatrick, P.A.
230 N. Washington Street, Suite 400
Rockville, MD 20850

Exhibit 6

-----Original Message-----

From: Klapakis, Evangelia A
Sent: Monday, October 24, 2005 12:17 PM
To: Trevor, Clark M.
Subject: Re:A98 329 125 (I-485 Qin CHEN)

Mr. Trevor,

Please be advised that the correct "A" number is A98 329 125 for Mr. Chen.

A Service Motion was done to reopen this case, which was denied on 10/7/05. In addition, the "A" file is being transferred to San Francisco District Office for their action

Angela

Reply Separator

Subject: A98 189 125 (I-485 Qin CHEN)
Author: "Trevor, Clark M." <SMFP:CMTrevor@duanemorris.com>
Date: 8/11/2005 1:09 PM

Dear Ms. Klapakis:

I was given your contact e-mail from Judith Bernstein-Baker, a fellow member of the American Immigration Lawyers Association.

Attached is a copy of my G-28 and correspondence of July 8, 2005 in the above referenced matter. It is self explanatory. I have been unable to reach a live person at the number Jody provided for your District Office. Can you please advise status on this matter?

Thank you.

Clark M. Trevor, Esq.
Duane Morris LLP
1 Market Street
Spear Tower, Suite 2000
San Francisco, CA 94105-1104
Tel: (415) 371-2200
Fax: (415) 371-2201
Direct: (415) 371-2209
Email: cmctrevor@duanemorris.com

-----Original Message-----

From: Klapakis, Evangelia A
Sent: Wednesday, November 02, 2005 8:58 AM
To: Trevor, Clark M.
Subject: Re:RE: Motion to Reopen -A98 329 125 (Qin CHEN)

The system shows San Jose, CA. For, that office requested the "A" file.

Reply Separator

Subject: RE: Motion to Reopen -A98 329 125 (Qin CHEN)
Author: "Trevor, Clark M." <SMTP:CMTrevor@duanemorris.com>
Date: 11/2/2005 11:42 AM

San Jose or San Francisco?

-----Original Message-----

From: Klapakis, Evangelia A
Sent: Wednesday, November 02, 2005 4:00 AM
To: Trevor, Clark M.
Subject: Re:Motion to Reopen -A98 329 125 (Qin CHEN)

No, you do not need to file a motion, for it was our error and the case was reopened. I had put a copy of my last E-mail inside the "A" file, which the computer system shows the file is in-transit to San Jose, CA.

Reply Separator

Subject: Motion to Reopen -A98 329 125 (Qin CHEN)
Author: "Trevor, Clark M." <SMTP:CMTrevor@duanemorris.com>
Date: 11/1/2005 3:13 PM

Dear Ms. Klapakis

Your office has returned our Motion to Reopen in the above-referenced matter asking that we resubmit on Form I-290B with fee. In view of your message, I am inquiring whether we need to re-file our Motion. Please advise. Thank you.

Clark M. Trevor, Esq.
Duane Morris LLP
1 Market Street
Spear Tower, Suite 2000
San Francisco, CA 94105-1104
Tel: (415) 371-2200
Fax: (415) 371-2201
Direct: (415) 371-2209
Email: cmtrevor@duanemorris.com

Exhibit 7



REQUEST FOR APPLICANT TO APPEAR FOR INITIAL INTERVIEW			NOTICE DATE December 01, 2005
CASE TYPE FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS			# A 098 329 125
APPLICATION NUMBER MSC0418921665	RECEIVED DATE March 31, 2004	PRIORITY DATE March 31, 2004	PAGE 1 of 1

QIN CHEN 655 S FAIR OAKS AVE L214 SUNNYVALE CA 94086 <i>1/06</i>	 <i>Approved for interview on 2/14/06</i>
---	--

You are hereby notified to appear for the interview appointment, as scheduled below, for the completion of your Application to Register Permanent Residence or Adjust Status (Form I-485) and any supporting applications or petitions. Failure to appear for this interview and/or failure to bring the below listed items will result in the denial of your application. (8 CFR 103.2(b)(13))

Who should come with you?

- ☐ If your eligibility is based on your marriage, your husband or wife must come with you to the interview.
- ☐ If you do not speak English fluently, you should bring an interpreter.
- ☐ Your attorney or authorized representative may come with you to the interview.
- ☐ If your eligibility is based on a parent/child relationship and the child is a minor, the petitioning parent and the child must appear for the interview.

***NOTE:** Every adult (over 18 years of age) who comes to the interview must bring Government-issued photo identification, such as a driver's license or ID card, in order to enter the building and to verify his/her identity at the time of the interview. You do not need to bring your children unless otherwise instructed. Please be on time, but do not arrive more than 45 minutes early. We may record or videotape your interview.

YOU MUST BRING THE FOLLOWING ITEMS WITH YOU: (Please use as a checklist to prepare for your interview)

- ☐ This Interview Notice and your Government issued photo identification.
- ☐ A completed medical examination (Form I-693) and vaccination supplement in a sealed envelope (unless already submitted).
- ☐ A completed Affidavit(s) of Support (Form I-864) with all required evidence, including the following, for each of your sponsors (unless already submitted):
 - ☐ Federal Income Tax returns and W-2's, or certified IRS printouts, for the past 3 years;
 - ☐ Letters from each current employer, verifying current rate of pay and average weekly hours, and pay stubs for the past 2 months;
 - ☐ Evidence of your sponsor's and/or co-sponsor's United States Citizenship or Lawful Permanent Resident status.
- ☐ All documentation establishing your eligibility for Lawful Permanent Resident status.
- ☐ Any immigration-related documentation ever issued to you, including any Employment Authorization Document (EAD) and any Authorization for Advance Parole (Form I-512).
- ☐ All travel documents used to enter the United States, including Passports, Advance Parole documents (I-512) and I-94s (Arrival/Departure Document).
- ☐ Your Birth Certificate.
- ☐ Your petitioner's Birth Certificate and your petitioner's evidence of United States Citizenship or Lawful Permanent Resident Status.
- ☐ If you have children, bring a Birth Certificate for each of your children.
- ☐ If your eligibility is based on your marriage, in addition to your spouse coming to the interview with you, bring:
 - ☐ A certified copy of your Marriage Document issued by the appropriate civil authority.
 - ☐ Your spouse's Birth Certificate and your spouse's evidence of United States Citizenship or Lawful Permanent Resident status;
 - ☐ If either you or your spouse were ever married before, all divorce decrees/death certificates for each prior marriage/former spouse;
 - ☐ Birth Certificates for all children of this marriage, and custody papers for your children and for your spouse's children not living with you;
- ☐ Supporting evidence of your relationship, such as copies of any documentation regarding joint assets or liabilities you and your spouse may have together. This may include: tax returns, bank statements, insurance documents (car, life, health), property documents (car, house, etc.), rental agreements, utility bills, credit cards, contracts, leases, photos, correspondence and/or any other documents you feel may substantiate your relationship.
- ☐ Original and copy of each supporting document that you submitted with your application. Otherwise, we may keep your originals for our records.
- ☐ If you have ever been arrested, bring the related Police Report and the original or certified Final Court Disposition for each arrest, even if the charges have been dismissed or expunged. If no court record is available, bring a letter from the court with jurisdiction indicating this.
- ☐ A certified English translation for each foreign language document. The translator must certify that s/he is fluent in both languages, and that the translation in its entirety is complete and accurate.

YOU MUST APPEAR FOR THIS INTERVIEW: If an emergency, such as your own illness or a close relative's hospitalization, prevents you from appearing, call the U.S. Citizenship and Immigration Services (USCIS) National Customer Service Center at 1-800-375-5283 as soon as possible. Please be advised that rescheduling will delay processing of application/petition, and may require some steps to be repeated. It may also affect your eligibility for other immigration benefits while this application is pending.

If you have questions, please call the USCIS National Customer Service Center at 1-800-375-5283 (hearing impaired TDD service is 1-800-767-1833).

PLEASE COME TO: U.S. Citizenship and Immigration Services 1887 MONTEREY ROAD 2ND FLR ROOM 200 SAN JOSE CA 95112	ON: Tuesday, February 14, 2006 AT: 08:00 AM
---	--

APPLICANT COPY

Exhibit 8



United States Department of Homeland Security
Citizenship and Immigration Services

1887 Monterey Road
San Jose, CA 95112

ADJUSTMENT OF STATUS NOTICE

Date: FEB 14 2006

Qin Chen
655 S. Fair Oaks Ave., #L214
Sunnyvale, CA 94086

File #: A98-329-125

Dear Applicant:

Your application for permanent resident status is pending for the reason(s) checked below:

INQUIRIES WILL NOT BE ACCEPTED UNTIL 120 DAYS AFTER YOUR INTERVIEW. No response will be given if submitted prior to the 120 days. Inquiries may be submitted in one of the following manners:

MAKE INQUIRE APPOINTMENTS ON THE INTERNET:

OR

MAIL

www.infopass.usins.gov

(The computer print-out is the ticket for your appointment.)

Citizenship & Immigration Services
ATTN: AOS INQUIRIES
1887 Monterey Road
San Jose, CA 95112

NOTE: Please bring this notice with you to your interview. Please include a copy of this notice with any correspondence.

☒ A required background check has been initiated; however, a response is still pending for
☒ you ☐ your spouse ☐ your child(ren): _____ (FBI NAME CHECK PEND.)

☒ According to this month's visa bulletin, a visa number is not currently available for you. It is recommended that you call the State Department's Visa Bulletin telephone number, (202) 663-1541, on a monthly basis to determine when a visa number will become available. Your category is: E17 Country of Chargeability: CHINA Priority Date 10/16/2003 When a visa number is available, you should **MAIL** a copy of this notice to: B.C.I.S. Attention: Priority Date; 1887 Monterey Road; San Jose, CA 95112.

☐ The Service has determined that there is another immigration file that must be obtained and reviewed before your case can be completed.

☐ You will be advised of the time and date of a second interview. If you have not heard anything from us with-in **6 months** from the above date, you may inquire concerning your case in Room 219, Window 2.

☐ An additional review of your case is required before a determination can be made as to your eligibility.

☐ Asylum Adjustment visa numbers are **NOT** available until **October 1st** of each year. If you have not heard anything by **December 1st** of that year, **mail** a copy of this notice to:
B.C.I.S. Attention: Priority Date; 1887 Monterey Road; San Jose, CA 95112.

☐ Please follow the instructions on Form I-72. You must submit all requested documents within 90 days. Additional time may not be granted (see 8 CFR 103.2(b)(8)).

☐ **Attorney Notified**

Exhibit 9

U.S. Department of Homeland Security
1887 Monterey Road,
San Jose, CA 95112

BIOMETRICS PROCESSING STAMP
XTE/SAN JOSE
ASC SITE CODE:
BIOMETRICS QA REVIEW BY:



U.S. Citizenship
and Immigration
Services

ON
TENPRINTS QA REVIEW BY:
ON MAY 23 2006

Date: May 16, 2006

Qin Chen
655 S. Fair Oaks Avenue, L214
Sunnyvale, CA 94086

File Number: A98-329-125
I-485 receipt #: MSC-04-189-21665

Officer: R. Patague, DAO

FINGERPRINTS REFERRAL NOTICE

Type of Application: ☒ Adjustment of Status (I-485) ☐ Naturalization/Citizenship (N-400)

☒ In order to continue processing your application, you must go to a CIS Application Support Center to have your fingerprints taken. You are hereby requested to appear to be fingerprinted at the location below:

☒ Application Support Center 122 Charcot Ave.
San Jose, CA 95131 Or ☒ Application Support Center (Santa Rita Plaza)
1954 North Main Street
Salinas, CA 93906

Hours: Sunday & Monday: **CLOSED**
Tuesday -- Saturday: 8:00 AM -- 3:30 PM

APPLICANTS MUST APPEAR UPON RECEIPT OF THIS NOTICE

If you cannot go to the CIS Application Support Center on the day you receive this notice, you may go on any business day thereafter, as long as you report **WITHIN 14 DAYS OF THIS NOTICE**.

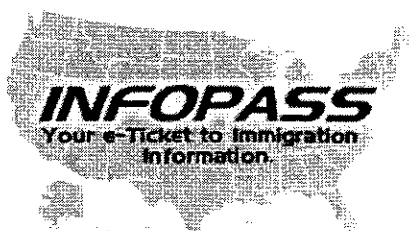
If you do not have them taken within that period, your application or petition may be considered abandoned and denied pursuant to 8 CFR § 103.2(b)(13).

When you go to have your fingerprints taken, you must bring: 1) **THIS NOTICE**; and 2) your Alien Registration Card (ARC). If you do not have an ARC, you must bring alternative photo identification such as a passport, valid driver's license, national ID, military ID, State-issued photo ID or other INS issued photo ID. **Naturalization applicants MUST bring Alien Registration Card.** All others must bring a state or government I.D. or an I.D. issued by your country. If you do not bring this notice and proper photo identification, you will not be permitted to have your fingerprints taken. This may cause a delay in the processing of your application.

FOR QUESTIONS REGARDING YOUR FINGERPRINTS, CALL 1-888-557-5398.

Please take note that the staff at the Application Service Center will not be able to answer any question about the status of your application.

Exhibit 10



Name: Qin Chen

Appointment Question about case

Type:

Confirmation SNJ-07-2899

No.:

Appointment January 30, 2007

Date:

Authentication 1762e

Code:

Appointment 1:15

Time: PM

Location: 1887 MONTEREY ROAD, San Jose, CA 95112; LOBBY

**This is your Confirmation
Number:**



**If you wish to cancel this appointment, you will need the
following Personal Identification Number:**

54014

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- **You must appear in person and bring photo identification along with this appointment letter.**
- **Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)**
- **In order to serve you more efficiently, we require you to bring all applicable immigration forms, letters, receipts, translations and originals of supporting documents.**

U.S. Department of Homeland Security

USCIS

1887 Monterey Road

San Jose, CA 95112



**U.S. Citizenship
and Immigration
Services**

Tuesday, January 30, 2007

QIN CHEN
655 S FAIR OAKS AVE
APT L-214
SUNNYVALE CA 94086

Dear QIN CHEN:

On 01/29/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:	The applicant
Attorney Name:	Information not available
Case type:	I485
Filing date:	Information not available
Receipt #:	msc-04-189-21665
Beneficiary (if you filed for someone else):	CHEN, QIN
Your USCIS Account Number (A-number):	Information not available
Type of service requested:	Case Status - Outside Processing Time

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

Exhibit 11

Qin Chen
655 S Fair Oaks Ave., L-214
Sunnyvale, CA 94086
Email: chenq12@yahoo.com
Tel: 408-306-0028
Fax: 408-543-0083

February 1, 2007

Field Director
USCIS SAN JOSE FIELD OFFICE
1887 Monterey Road
San Jose, CA 95112.

Sub: I-485 application and FBI name check status

RE: Qin CHEN
SS #: 281-98-4759
Type of Application: I-485, Adjustment of Status
Alien Registration #: A 098 239 125
Receipt #: MSC-04-189-21665
Date of Birth: [REDACTED]
Country of Birth: P. R. China

Dear Sir/Madam:

I am writing this letter to ask for my I-485 application and FBI name check status.

My application to Register Permanent Resident or Adjustment of Status (I-485) was filed in March, 2004 in the category of Outstanding Professor or Researcher; fingerprints were taken at USCIS in July, 2004. Interview was done at USCIS San Jose local office in February, 2006 and was informed that my case could not be approved due to the pending FBI name check and Priority Date. Fingerprints were taken in May, 2006 for the second time, when my Priority Date had been current.

To check my case status, I had gone to USCIS San Jose local office 4 times so far. I was told every time that my case can not be approved because my FBI name check is still pending (request submitted by USCIS in May, 2006). It has been almost 3 years since my I-485 application was filed, I can not just wait in dark without your kind help. Could you please help to check my FBI name check status and expedite the process if possible. I was told by your personnel that my FBI name check is not finished in time, can USCIS do anything in this delayed situation?

Looking forward to your earliest reply, and please feel free to contact me if you need any further information.

Sincerely yours,


Qin Chen

To serve you more efficiently we are replying to your letter by this informal method enabling a more prompt response. We trust you will agree that a faster response is more important than formality. No record has been made of this correspondence and should you write again concerning the same matter, please return the attached correspondence.

Qin Chen
655 S Fair Oaks Avenue, L-214
Sunnyvale CA 94086

Alien Number: 098 329 125

Date: February 12, 2007

Dear Applicant/Attorney or Representative

In reply to your letter dated February 1, 2007, following information is provided:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your FBI name check remains open.

Until the name check investigation is completed, we cannot move forward on your case. These name checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the name checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number (1-800-375-5283).

Attachment:

Sincerely,
Information Unit/I-/BC
Citizenship & Immigration Services
1887 Monterey Rd
San Jose CA 95112

M-180 (Rev. 10-15-75)Y

Exhibit 12

Qin Chen
655 S Fair Oaks Ave., L-214
Sunnyvale, CA 94086
Email: cheng12@yahoo.com
Tel: 408-306-0028
Fax: 408-543-0083

February 1, 2007

The Honorable Senator Dianne Feinstein
One Post Street, Suite 2450
San Francisco, CA 94104

Sub: FBI name check status and expedition

RE: Qin CHEN
SS #: 281-98-4759
Type of Application: I-485, Adjustment of Status
Alien Registration #: A 098 239 125
Receipt #: MSC-04-189-21665
Date of Birth: [REDACTED]
Country of Birth: P. R. China

Dear Senator Feinstein:

I am writing this letter to look for your kind help on FBI name check status and expedition, which is related to my I-485 application with USCIS.

My application to Register Permanent Resident or Adjustment of Status (I-485) was filed in March, 2004 in the category of Outstanding Professor or Researcher; fingerprints were taken at USCIS in July, 2004. Interview was done at USCIS San Jose local office in February, 2006 and was informed that my case could not be approved due to the pending FBI name check and Priority Date. Fingerprints were taken in May, 2006 for the second time, when my Priority Date had been current.

To check my case status, I had gone to USCIS San Jose local office 4 times so far. I was told every time that my case can not be approved because my FBI name check is still pending (request submitted by USCIS in May, 2006).

It has been almost 3 years since my I-485 application was filed, I sincerely hope that you can help on 1) why USCIS can not do anything even they admit my FBI name check is delayed, 2) my name check status from FBI and expedite the process if possible.

I appreciate your prompt attention to this matter, and please feel free to contact me if you need any further information.

Sincerely yours,


Qin Chen

DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND
ADMINISTRATION — CHAIRMAN
SELECT COMMITTEE ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

March 9, 2007

Qin Chen
655 South Fair Oaks Avenue, Apartment L-214
Sunnyvale, California 94086

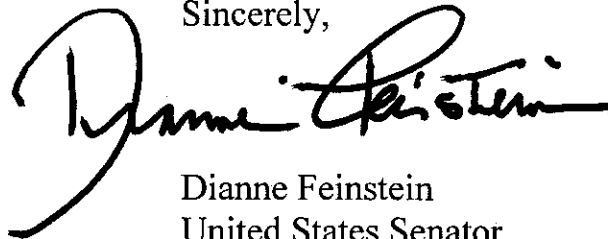
Dear Qin:

Thank you for contacting my office regarding your concerns with the status of your name check. I appreciate your bringing this to my attention and giving me an opportunity to see if my office can be of assistance.

I have asked Morgan Galli in my San Francisco office to assist you. Ms. Galli has contacted the Federal Bureau of Investigation on your behalf. You will hear back from my office when a response is received from the agency, which usually takes eight to ten weeks.

Again, thank you for contacting me. My San Francisco staff will do all they can to help you.

Sincerely,



Dianne Feinstein
United States Senator

DF:mg

FRESNO OFFICE:
2500 TULARE STREET
SUITE 4290
FRESNO, CA 93721
(559) 485-7430

LOS ANGELES OFFICE:
11111 SANTA MONICA BOULEVARD
SUITE 915
LOS ANGELES, CA 90025
(310) 914-7300

SAN DIEGO OFFICE:
750 B STREET
SUITE 1030
SAN DIEGO, CA 92101
(619) 231-9712

SAN FRANCISCO OFFICE:
ONE POST STREET
SUITE 2450
SAN FRANCISCO, CA 94104
(415) 393-0707

United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

May 25, 2007

Qin Chen
655 South Fair Oaks Avenue, Apartment L-214
Sunnyvale, California 94086

Dear Qin:

The Federal Bureau of Investigation has told me that your name check has been pending since 5/10/06. The FBI requests that our office wait ninety days before making a follow up inquiry.

I hope that this information is helpful and that it will clarify the situation for you. If you have further questions, or if there is any way the Senator's office can help you in the future on other federal matters, I hope you will contact us again.

Sincerely,



Morgan Galli

Constituent Services Representative

Exhibit 13

Qin Chen
655 S Fair Oaks Ave., L-214
Sunnyvale, CA 94086
Email: cheng12@yahoo.com
Tel: 408-306-0028
Fax: 408-543-0083

February 1, 2007

First Lady Laura Bush
The White House
1600 Pennsylvania Ave, NW
Washington, DC 20500

Sub: FBI name check status and expedition

RE: Qin CHEN
SS #: 281-98-4759
Type of Application: I-485, Adjustment of Status
Alien Registration #: A 098 239 125
Receipt #: MSC-04-189-21665
Date of Birth: [REDACTED]
Country of Birth: P. R. China

Dear Ms. Bush:

I am writing this letter to look for your kind help on FBI name check status and expedition, which is related to my I-485 application with USCIS.


My application to Register Permanent Resident or Adjustment of Status (I-485) was filed in March, 2004 in the category of Outstanding Professor or Researcher; fingerprints were taken at USCIS in July, 2004. Interview was done at USCIS San Jose local office in February, 2006 and was informed that my case could not be approved due to the pending FBI name check and Priority Date. Fingerprints were taken in May, 2006 for the second time, when my Priority Date had been current.

To check my case status, I had gone to USCIS San Jose local office 4 times so far. I was told every time that my case can not be approved because my FBI name check is still pending (request submitted by USCIS in May, 2006).

It has been almost 3 years since my I-485 application was filed, I sincerely hope that you can help on 1) why USCIS can not do anything even they admit my FBI name check is delayed, 2) my name check status from FBI and expedite the process if possible.

I appreciate your prompt attention to this matter, and please feel free to contact me if you need any further information.

Sincerely yours,


Qin Chen



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

March 28, 2007

WH 581917

Mr. Qin Chen
Apartment L-214
655 South Fair Oaks Avenue
Sunnyvale, CA 94086

Dear Mr. Chen:

Your letter dated February 1, 2007, directed to Mrs. George W. Bush concerning your name check status for immigration purposes, was forwarded to the Department of Justice and subsequently referred to the Federal Bureau of Investigation (FBI) for reply.

A review of the FBI's Name Check Program database revealed that your request was received from the United States Citizenship and Immigration Services on May 10, 2006, and is currently in process. Our records show that your alien registration number is "A098329125."

The FBI processes millions of name check requests each year with each requiring thoughtful consideration. We know how important this information is to you; however, the FBI must also balance the need for national security in preparing the response to each of these requests. The FBI's homeland security mission requires that our name check process be primarily focused on an accurate and thorough result. While an exact date for completion of this review cannot be given, you may be assured that the results will be made available to the immigration authorities as quickly as possible.

I trust this information will be of assistance.

Sincerely,


for 
Michael A. Cannon
Section Chief
National Name Check Program Section
Records Management Division

Exhibit 14

BARBARA BOXER
CALIFORNIA

COMMITTEES:
COMMERCE, SCIENCE,
AND TRANSPORTATION
ENVIRONMENT
AND PUBLIC WORKS
FOREIGN RELATIONS

United States Senate

HART SENATE OFFICE BUILDING
SUITE 112
WASHINGTON, DC 20510-0505
(202) 224-3553
<http://boxer.senate.gov/contact>

February 23, 2007

Ms. Qin Chen
655 S Fair Oaks Ave, Apartment L-214
Sunnyvale, California 94086

Dear Ms. Chen:

Thank you for your recent correspondence to Senator Boxer requesting assistance with your immigration problem. It is my understanding that your case is currently pending security clearances.

I have sent an inquiry to the Federal Bureau of Investigation (FBI) Name Check Program. However, due to the sensitive nature of security clearances, our office is unable to request expeditious processing of your name check. The inquiry will only reveal the status of your case.

The average time for a response from the FBI is approximately sixty days. If you do not hear from our office after sixty days, please call me at (415) 403-0100.

Thank you for writing.

Sincerely,



Lucia C. Macias
Constituent Representative

1700 MONTGOMERY STREET
SUITE 240
SAN FRANCISCO, CA 94111
(415) 403-0100

312 NORTH SPRING STREET
SUITE 1748
LOS ANGELES, CA 90012
(213) 894-5000

501 'I' STREET
SUITE 7-600
SACRAMENTO, CA 95814
(916) 448-2787

2500 TULARE STREET
SUITE 5290
FRESNO, CA 93721
(559) 497-5109

600 'B' STREET
SUITE 2240
SAN DIEGO, CA 92101
(619) 239-3884

201 NORTH 'E' STREET
SUITE 210
SAN BERNARDINO, CA 92401
(909) 888-8525

Exhibit 15

WASHINGTON OFFICE
205 CANNON BUILDING
WASHINGTON, DC 20515-0514
(202) 225-8104
FAX (202) 225-8890

DISTRICT OFFICE
698 EMERSON STREET
PALO ALTO, CA 94301-1609
(650) 323-2984
(408) 245-2339
(831) 335-2020
FAX (650) 323-3498

<http://eshoo.house.gov>

Anna G. Eshoo
14th District, California
Congress of the United States
House of Representatives
Washington, DC 20515-0514

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEES:
TELECOMMUNICATIONS AND THE INTERNET
HEALTH

PERMANENT SELECT COMMITTEE ON
INTELLIGENCE

SUBCOMMITTEES:
INTELLIGENCE POLICY AND NATIONAL
SECURITY, RANKING MEMBER
TECHNICAL AND TACTICAL INTELLIGENCE

WHIP AT LARGE

CO-CHAIR
E-911 CAUCUS

CO-CHAIR
MEDICAL TECHNOLOGY CAUCUS

VICE-CHAIR
DEMOCRATIC BUDGET GROUP

April 16, 2007

Ms. Qin Chen
655 South Fair Oaks Avenue, L-214
Sunnyvale, California 94086

Dear Ms. Chen,

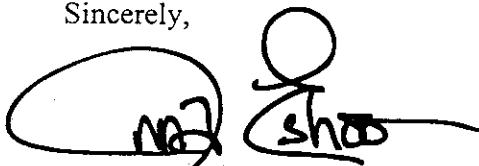
I write to follow up with you regarding your case.

The FBI notified me that your Name Check is still actively being reviewed. Once completed, they will notify the CIS so that a decision can be made on your case. I've asked the CIS to adjudicate your application as expeditiously as possible and notify you directly of their decision.

I hope this information is helpful to you and thank you again for the opportunity to be of assistance. If you have any questions or updates on your case, please contact Patty Kim in my Palo Alto District Office. We will continue to follow up with the FBI periodically to check on the progress of your case.

Enclosed is information on security checks that I thought might be of interest to you.

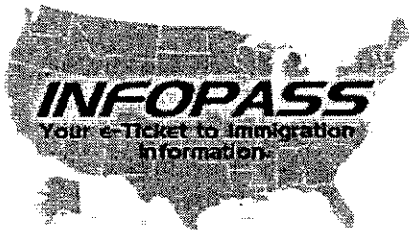
Sincerely,

A handwritten signature in black ink, appearing to read 'A. Eshoo', with a large circular flourish to the left.

Anna G. Eshoo
Member of Congress

Enclosure

Exhibit 16



Name: Qin Chen

**Appointment Question about case
Type:**

**Confirmation SNJ-07-12819
No.:**

**Appointment May 17, 2007
Date:**

**Authentication 1762e
Code:**

**Appointment 10:00
Time: AM**

Location: 1887 MONTEREY ROAD, San Jose, CA 95112; LOBBY

**This is your Confirmation
Number:**



* S N J - 0 7 - 1 2 8 1 9 *

**If you wish to cancel this appointment, you will need the
following Personal Identification Number:
90353**

**Please be on time. Failure to show up on time will result in the cancellation of
your appointment. You will then need to reschedule your appointment. You will
not be admitted more than 15 minutes before your scheduled appointment time.**

- **You must appear in person and bring photo identification along with this appointment letter.**
- **Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)**
- **In order to serve you more efficiently, we require you to bring all applicable immigration forms, letters, receipts, translations and originals of supporting documents.**
- **NOTE: Cell phones that have camera features are not permitted in the building. Food and drinks are not permitted in the waiting room. In order to facilitate easy and swift entrance, you are advised to keep handbags and metal objects to a minimum by leaving such items at home or with a person who will remain outside the building.**

Exhibit 17

Law Office of Clark M. Trevor

May 24, 2007

Mr. Frank D. Siciliano
Officer in Charge
USCIS – San Jose Sub-Office
1887 Monterey Road
San Jose, CA 95112

Re: Qin CHEN
A98-329-125
MSC-04-189-21665

Dear Mr. Siciliano:

Attached is a copy of my correspondence of February 19, 2007 in the above-referenced matter. DAO Patague has not responded. I write to request that you take personal action to reach a final decision on my client's adjustment of status application.

The application has been pending for over 3 years. The I-140 was approved by your Service on November 16, 2004. (See attached copy of I-797.) The priority date has been current since June 2006 (EB-1 China.)

Dr. Chen has completed biometrics processing twice. His application was originally filed with the Missouri Service Center (MSC-04-189-21665) with receipt date of March 31, 2004. It is noteworthy that the original I-485/I-131 and I-765 receipt notices issued by the MSC assigned the 'A' number from Dr. Chen's Optional Practical Training EAD card. This oversight may have caused the first background check to be delayed or possibly not associated to Dr. Chen's actual 'A' file (i.e., A98 329 125.)

In June 2005, Dr. Chen moved to California in order to join Finisar Corporation in Sunnyvale as a Research Scientist in Opto-electronics Transceiver Design. He joined Finisar pursuant to the I-485 "portability" provisions of AC21 §106(c). Within 10 days of his move to California, Dr. Chen filed an AR-11 with your Service. (See attached correspondence.)

Meanwhile, the MSC transferred Dr. Chen's application to the local District Office in Philadelphia and an interview was scheduled for August 2, 2005. On July 11, 2005, my former firm notified the Philadelphia D.O. that Dr. Chen had moved to California and was unable to appear at the interview and we requested that his A file be transferred to San Jose. Despite my G-28 on file and my client's timely filed AR-11, Philadelphia issued a denial of Form I-485 on October 7, 2005 for failure to appear at the interview and mailed the decision to Dr. Chen's former counsel and his previous residence address. After these facts were explained to the Philadelphia D.O., the Service

reopened the denied I-485 and forwarded the application to San Francisco D.O. on approximately October 24, 2005. (See attached correspondence.)

Dr. Chen was interviewed by Mr. Patague on February 14, 2006. At the conclusion of the interview, Officer Patague gave Dr. Chen another Biometrics Referral Notice and Dr. Chen completed the prints on the same day. Mr. Patague also provided Dr. Chen with an "Adjustment of Status Notice" indicating that that "A required background check has been initiated..." (See copy attached.) In view of the confusion surrounding the correct 'A' number, it is not clear that the background checks were initiated by the Service prior to February 14, 2006.

Under the circumstances, it is respectfully requested that you initiate an expedite of the required background checks and complete final processing of this application.

Thank you.

Yours very truly,

Clark M. Trevor

Attachments

Cc: Hon. Anna G. Eshoo, Congresswoman, 14th Congressional District, CA
D. Neufeld, Acting Chief, Field Operations Div, USCIS, Washington, D.C.



U. S. Department of Homeland Security
U.S. Citizenship and Immigration Services

*District Twenty One 630
Sansome Street San
Francisco, CA 94111*

August 23, 2007

Law Office of Clark Trevor
57 Post Street, Suite 907
San Francisco, CA 94104

Re: Qin Chen
A98 329 125

Dear Mr. Trevor,

I am responding to your most recent inquiry of May 24th regarding the above-referenced case. The courtesy copy you included to the Acting Chief of USCIS Field Operations has been referred to me for attention. I regret the delay in response.

We have reviewed our case file and can confirm the series of events you have described in your letter of inquiry as being basically correct, except for one e-mail response to you from our Philadelphia office indicating that a Service Motion to Reopen had been denied. As you know, our San Jose Field Office did reopen the 1-485 adjustment application on a service motion and conducted an interview. We have confirmed that the case remains active, pending the FBI name check portion of required background checks.

In reply to your concern regarding the timing of the background check initiation due to "A number" confusion, our records indicate that in fact two background checks have been initiated. The first was done on May 13, 2004, shortly after initial receipt of the 1-485 on March 31, 2004, under the BAD number of 135026682. The second check was initialed by the San Jose Field Office on May 2, 2006, under A98 329 125. Unfortunately both submissions remain pending clearance for FBI name checks.

We regret any delays cause by the initial denial and closure of your client's case for failure to appear following a timely notice of change of address. However, as both background checks remain pending, it appears any delays for other reasons have not affected the timing of our agency's ability to effect a final adjudication. Thus there is no justification for us to submit a request to the FBI for expedited processing.

Thank you for your inquiry and I hope this information has addressed your concerns.

Sincerely,

• Rosemary Langley Melville
District Director

Cc: Frank D. Siciliano, San Jose Field Office Director
David M. Lester, Branch Chief, HQ Field Operations

Exhibit 18

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

1887 Monterey Rd. San Jose, CA 95112

Qin Chen
 655 S. Fair Oaks Avenue # L214
 Sunnyvale, CA 94086

DATE: 8/22/2007
 A FILE NUMBER: A098 329 125

Your application for permanent resident status is pending for the reason(s) checked below:

INQUIRIES WILL NOT BE ACCEPTED UNTIL 120 DAYS AFTER YOUR INTERVIEW. No response will be given if submitted prior to the 120 days. Inquiries may be submitted in one of the following manners:

WALK-IN OR DROP OFF INQUIRY: **OR** **MAIL**

INFORMATION UNIT LOBBY/PLEASE USE INFOPASS AT USCIS.GOV

Citizenship & Immigration Services

1887 Monterey Road, San Jose, CA

SERVICE HOURS: Mon., Tues., Wed. and Fri. - 7:00 AM - 3:00 PM

Thurs. - 7:00 AM - 12:00 NOON

ATTN: AOS INQUIRIES

1887 Monterey Road

San Jose, CA 95112

NOTE: Please bring this notice with you if you come to the office. Please include a copy of this notice with any correspondence.

☒ A required background check has been initiated; however, a response is still pending for

☒ you ☐ your spouse ☐ your child(ren): FBI NAME CHECK.

☐ According to this month's visa bulletin, a visa number is not currently available for you. It is recommended that you call the State Department's Visa Bulletin telephone number, (202) 663-1541, on a monthly basis to determine when a visa number will become available. Your category is: _____
 Country of Chargeability: _____ Priority Date: _____. When a visa number is available, you should **MAIL** a copy of this notice to: B.C.I.S. Attention: Priority Date; 1887 Monterey Road; San Jose, CA 95112.

☐ The Service has determined that there is another immigration file that must be obtained and reviewed before your case can be completed.

☐ You will be advised of the time and date of a second interview. If you have not heard anything from us within **nine months** from the above date, you may inquire concerning your case in Room 219, Window 2.

☐ An additional review of your case is required before a determination can be made as to your eligibility.

☐ Your FBI Clearance has expired. Please follow the instructions for re-fingerprinting on the attached sheet. Please allow 60 days for receipt of your new FBI Clearance before initiating another inquiry with us.

☐ Please follow the instructions on Form I-72 that was provided to you at the time of your interview. You must submit all requested documents within 90 days. Additional time may not be granted (see 8 CFR 103.2(b)(8)).

☐ Other: PENDING DISPOSITION OF PRINCIPLE APPLICATION.

Exhibit 19

No record has been made of this correspondence and should you write again concerning the same matter, please return
The attached correspondence.

August 23, 2007

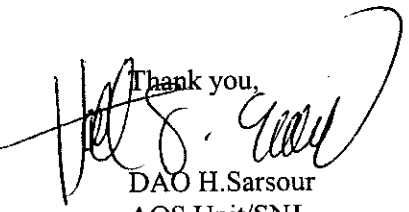
Qin Chen
655 S. Fair Oaks Avenue # L214
Sunnyvale, CA 94086

RE: I-485, Application for Adjustment of Status.
File Number: A098 329 125

Dear Mr. Chen,

I received your inquiry regarding the above referenced application for adjustment of status. Unfortunately the required background checks are not completed yet. I am enclosing a fact sheet regarding Immigration Security Checks. Hopefully this would answer some of your questions. We will notify you as soon as the FBI name check is completed.

Thank you,



DAO H. Sarsour
AOS Unit/SNJ

M-180 (rev. 10-15-75) Y

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
Citizenship and Immigration Service

Exhibit 20

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U.S. Citizenship and Immigration Services California Service Center Processing Dates Posted August 15, 2007

Notice: U.S. Citizenship and Immigration Services (USCIS) has improved the reporting procedure for processing times of immigration benefit applications. In the past, USCIS benefit processing reports indicated the specific type of applications or petitions that were being processed and the date the cases were received. However, the date the case was received did not provide a clear indication of when USCIS expected to complete the case, nor did it provide a clear indication of USCIS' commitment to process cases within a certain cycle time. It also did not align with the processing times and cycle times the agency reports in other contexts.

This improved reporting procedure is an effort to give our customers more accurate information that better reflects current processing time and USCIS service level commitments. Effective immediately, when we are completing applications and petitions within our service level goals we will report the USCIS service level commitment. For example, when our service level goal is to process a particular kind of case within six months, and if our processing time is six months or less, we will show "6 months".

When we are not meeting our service level goal, the date posted will reflect the filing date of cases that are being completed. It should be noted that while in some instances reported processing dates may appear to have regressed due to this change, they do not reflect a lengthening of USCIS processing times, but simply the change in reporting. Our goal is to provide accurate projections and thus give customers clear expectations as to what they can expect as a processing time.

There are several important exceptions to the processing times shown below:

- Case processing will be delayed if we must ask you for more evidence or information.
If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.
- The case processing timeframe will start over if a customer doesn't appear for an interview or asks that it be rescheduled.

What if I have a problem or have questions about a case?

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our fact sheet –

[Case Services - How do I... know what kind of services are available to me after I file my application or petition?](#)

One additional point about these projections. They are the time to complete processing and mail the actual notice and/or document. If you check case status online and see that your case has been approved, and you haven't yet received your approval notice or document in the mail, we ask that you wait thirty days from the approval date before contacting us. That is because it may take that long before it is returned to us as undeliverable. You can also print the case status online answer for your records.

Service Center Processing Dates for **California Service Center** Posted August 15, 2007

Form	Title	Classification or Basis for Filing	Processing Timeframe
I-90	Application to Replace Permanent Resident Card	Initial issuance or replacement	July 16, 2006
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	Initial issuance or replacement of a Form I-94	3 Months
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Visa to be issued abroad	2 Months
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Change of status in the U.S.	2 Months
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Extension of stay in the U.S.	2 Months
I-129	Petition for A Nonimmigrant Worker	H-2A - Temporary workers	15 Days
I-129	Petition for A Nonimmigrant Worker	H-2B - Other temporary workers	30 Days
I-129	Petition for A Nonimmigrant Worker	H-3 - Temporary trainees	2 Months
I-129	Petition for A Nonimmigrant Worker	E - Treaty traders and investors	2 Months
I-129	Petition for A Nonimmigrant Worker	L - Intracompany transfers	30 Days
I-129	Petition for A Nonimmigrant Worker	Blanket L	2 Months
I-129	Petition for A Nonimmigrant Worker	O - Extraordinary ability	2 Months
I-129	Petition for A Nonimmigrant Worker	P - Athletes, artists, and entertainers	2 Months
I-129	Petition for A Nonimmigrant Worker	Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process	2 Months
I-129	Petition for A Nonimmigrant Worker	R - Religious occupation	2 Months
I-129	Petition for A Nonimmigrant Worker	TN - North American Free Trade Agreement (NAFTA) professional	2 Months
I-129F	Petition for Alien Fiance(e)	K-1/K-2 - Not yet married - fiance and/or dependent child	6 Months
I-130	Petition for Alien Relative	U.S. citizen filing for a spouse, parent, or child under 21	February 12, 2007
I-130	Petition for Alien Relative	U.S. citizen filing for an unmarried son or daughter over 21	January 17, 2003
I-130	Petition for Alien Relative	U.S. citizen filing for a married son or daughter over 21	April 30, 2001
I-130	Petition for Alien Relative	U.S. citizen filing for a brother or sister	April 30, 2001
I-130	Petition for Alien Relative	Permanent resident filing for a spouse or child under 21	January 01, 2005

I-130	Petition for Alien Relative	Permanent resident filing for an unmarried son or daughter over 21	February 07, 2005
I-131	Application for Travel Document	All other applicants for advance parole	April 18, 2007
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	Readmission after deportation or removal	6 Months
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	All other special immigrants	January 28, 2006
I-485	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	6 Months
I-526	Immigrant Petition By Alien Entrepreneur	For use by an entrepreneur who wishes to immigrate to the United States	February 02, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	All other change of status applications	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	Extension of stay for H and L dependents	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for F or M academic or vocational students	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for J exchange visitors	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	All other extension applications	3 Months
I-612	Application for Waiver of the Foreign Residence Requirement	Application for a waiver of the 2-year foreign residence requirement based on exceptional hardship or persecution	December 11, 2006
I-751	Petition to Remove the Conditions on Residence	Removal of lawful permanent resident conditions (spouses of U.S. citizens and lawful permanent residents)	6 Months
I-765	Application for Employment Authorization	Based on a request by a qualified F-1 academic student. [(c)(3)]	11 Weeks
I-765	Application for Employment Authorization	Based on a pending asylum application [(c)(8)]	30 Days
I-765	Application for Employment Authorization	Based on a pending I-485 adjustment application [(c)(9)]	11 Weeks
I-765	Application for Employment Authorization	Based on TPS for Honduras/Nicaragua [(c)(19), (a)(12)]	11 Weeks
I-765	Application for Employment Authorization	Based on TPS for El Salvador [(c)(19)(a)(12)]	11 Weeks
I-765	Application for Employment	All other applications for employment	11 Weeks

	Authorization	authorization	
I-817	Application for Family Unity Benefits	Voluntary departure under the family unity program	6 Months
I-824	Application for Action on an Approved Application or Petition	To request further action on an approved application or petition	6 Months
I-829	Petition by Entrepreneur to Remove Conditions	Removal of lawful permanent resident conditions (immigrant investors)	6 Months
I-829	Petition by Entrepreneur to Remove Conditions	Removal of lawful permanent resident conditions (immigrant investors) based on PL107-273	September 10, 1997

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U.S. Department of Homeland Security